

ORIGINAL

1 KAREN P. HEWITT  
United States Attorney  
2 HELEN H. HONG  
Assistant United States Attorney  
3 California State Bar No. 235635  
United States Attorney's Office  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101  
Telephone: (619) 557-7459  
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7 Attorneys for Plaintiff  
United States of America

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10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) Case No. 3:CR1542-LAB-2  
13 )  
13 Plaintiff, )  
14 )  
14 v. ) PLEA AGREEMENT  
15 JESUS ANGEL PAZ-ESTAVILLO (2), ) (Pre-Indictment Fast-Track Program)  
16 )  
16 Defendant. )  
17 )  
17 \_\_\_\_\_)

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
19 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,  
20 and Helen H. Hong, Assistant United States Attorney, and defendant,  
21 JESUS ANGEL PAZ-ESTAVILLO, with the advice and consent of Elizabeth  
22 M. Barros, counsel for defendant, as follows:

23 //

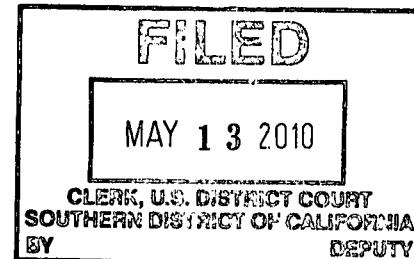
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28 HHH:rp:4/23/10



Def. Initials TAP/E

I

## THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

On or about April 10, 2010, within the Southern District of California, defendant JESUS ANGEL PAZ-ESTAVILLO, with the intent to violate the immigration laws of the United States, did bring or attempt to bring to the United States an alien, namely, Israel Lopez-Ramirez, knowing that said person was an alien, at a place other than a designated port of entry and at a place other than as designated by the Department of Homeland Security; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(i) and (v)(II).

11 This plea agreement is part of a "package" disposition. In order  
12 for defendant to receive the benefit of this agreement, codefendant(s)  
13 ALEXANDRA BUTCHER also must plead guilty at the same time. See  
14 Section VI.E. below.

15       B.     No Prosecution on Mandatory Minimum Count. In exchange for  
16 defendant's guilty plea and sentencing on the single-count Information  
17 and provided defendant complies fully with all terms of this plea  
18 agreement, the Government agrees not to charge him/her with violating  
19 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case,  
20 carries a three-year mandatory minimum sentence.

21 C. Forfeiture. The defendant further agrees to the  
22 administrative and/or civil forfeiture of all properties seized in  
23 connection with this case which the defendant agrees are subject to  
24 forfeiture to the United States pursuant to Title 8, United States  
25 Code, Section 1324(b). The defendant further waives his/her right to  
26 receive timely notice of administrative forfeiture as set forth in  
27 18 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in  
28 this and all other administrative and civil proceedings. Defendant

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10 CR 1572

1 warrants and represents as a material fact that all property in which  
2 he/she has any interest may be forfeited as described above.

II

**NATURE OF THE OFFENSE**

#### A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is  
pleading guilty has the following elements:

1. Defendant brought a person who was an alien into the United States at a place other than a designated port of entry or at a place other than as designated by a United States immigration official;
2. Defendant knew that the person was an alien; and,
3. Defendant acted with the intent to violate the United States immigration laws by assisting that person to enter the United States at a time or place other than as designated by a United States immigration official or to otherwise elude United States immigration officials.

**B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS**

16 Defendant has fully discussed the facts of this case with defense  
17 counsel. Defendant has committed each of the elements of the crime,  
18 and admits that there is a factual basis for this guilty plea. The  
19 following facts are true and undisputed:

1. On April 10, 2010, defendant aided in bringing in 4 aliens including, Israel Lopez-Ramirez, into the United States from Mexico aboard a boat to Mission Bay, California, by assisting in refueling the boat.
2. Defendant knew that Israel Lopez-Ramirez was an alien.
3. The material witness was paying an unknown amount to others to be brought into the United States illegally and transported illegally to his destination therein.
4. Defendant acted with the intent to violate the United States immigration laws by assisting Israel Lopez-Ramirez to enter the United States at a time or place other than as designated by a United States immigration official or to otherwise elude United States immigration officials.

III

## **PENALTIES**

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

- A. a maximum 10 years in prison;
- B. a maximum \$250,000.00 fine;
- C. a mandatory special assessment of \$100.00 per count; and
- D. a term of supervised release of not more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

IV

**DEFENDANT'S WAIVER OF TRIAL RIGHTS**

Defendant understands that this guilty plea waives the right to:

- A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. a speedy and public trial by jury;
- C. the assistance of counsel at all stages of trial;
- D. confront and cross-examine adverse witnesses;
- E. present evidence and to have witnesses testify on behalf of defendant; and,
- F. not testify or have any adverse inferences drawn from the failure to testify.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

25 The Government represents that any information establishing the  
26 factual innocence of defendant known to the undersigned prosecutor in  
27 this case has been turned over to defendant. The Government will

Def. Initials S A P E  
10 CR 1542

1 continue to provide such information establishing the factual  
2 innocence of defendant.

3 Defendant understands that if this case proceeded to trial, the  
4 Government would be required to provide impeachment information  
5 relating to any informants or other witnesses. In addition, if  
6 defendant raised an affirmative defense, the Government would be  
7 required to provide information in its possession that supports such  
8 a defense. Defendant acknowledges, however, that by pleading guilty  
9 defendant will not be provided this information, if any, and  
10 Defendant also waives the right to this information. Finally,  
11 defendant agrees not to attempt to withdraw the guilty plea or to file  
12 a collateral attack based on the existence of this information.

13 VI

14 DEFENDANT'S REPRESENTATION THAT GUILTY  
PLEA IS KNOWING AND VOLUNTARY

15 Defendant represents that:

16 A. Defendant has had a full opportunity to discuss all the  
17 facts and circumstances of this case with defense counsel,  
18 and has a clear understanding of the charges and the  
consequences of this plea;

19 B. No one has made any promises or offered any rewards in  
return for this guilty plea, other than those contained in  
20 this agreement or otherwise disclosed to the court;

21 C. No one has threatened defendant or defendant's family to  
induce this guilty plea; and,

22 D. Defendant is pleading guilty because in truth and in fact  
23 defendant is guilty and for no other reason.

24 E. "Package" Disposition. Further, defendant expressly  
25 acknowledges her understanding that the disposition  
contemplated by this agreement is part of a "package"  
disposition with her codefendant(s) ALEXANDRA BUTCHER,  
26 wherein the Government's obligations under the agreement  
are conditioned on the performance by defendant and her  
27 codefendant(s) of their obligations under the agreement.

28 VII

1                   **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**  
 2                   **SOUTHERN DISTRICT OF CALIFORNIA**

3                 This plea agreement is limited to the United States Attorney's  
 4 Office for the Southern District of California, and cannot bind any  
 5 other federal, state or local prosecuting, administrative, or  
 6 regulatory authorities, although the Government will bring this plea  
 7 agreement to the attention of other authorities if requested by the  
 8 defendant.

9                   **VIII**

10                  **APPLICABILITY OF SENTENCING GUIDELINES**

11                 Defendant understands the sentence imposed will be based on the  
 12 factors set forth in 18 U.S.C. § 3553(a). Defendant understands  
 13 further that in imposing the sentence, the sentencing judge must  
 14 consult the United States Sentencing Guidelines (Guidelines) and take  
 15 them into account. Defendant has discussed the Guidelines with  
 16 defense counsel and understands that the Guidelines are only advisory,  
 17 not mandatory, and the court may impose a sentence more severe or less  
 18 severe than otherwise applicable under the Guidelines, up to the  
 19 maximum in the statute of conviction. Defendant understands further  
 20 that the court may order a presentence report to be prepared by the  
 21 U.S. Probation Office and that defense counsel and the Government will  
 22 have an opportunity to review and challenge the presentence report.  
 23 Nothing in this plea agreement shall be construed as limiting the  
 24 Government's duty to provide complete and accurate facts to the  
 25 district court and the U.S. Probation Office.

26                 //

27                 //

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IX

**SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

x

## **PARTIES' SENTENCING RECOMMENDATIONS**

A. SENTENCING GUIDELINE CALCULATIONS

20        Although the parties understand that the Guidelines are only  
21 advisory and just one of the factors the court will consider under  
22 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly  
23 recommend the following Base Offense Level, Specific Offense  
24 Characteristics, Adjustments and Departures:

25 //

26 //

27 //

28 //

1	1.	Base Offense Level [USSG § 2L1.1(a)(3)]	12
2	2.	Prior Immigration Felony [USSG § 2L1.1(b)(3)]	0*
3	3.	Acceptance of Responsibility [USSG § 3E1.1]	-2
4	4.	Departure for Fast Track [USSG § 5K3.1]	-2
5	<b>Total Offense Level</b>		
			<b>8</b>

\*There is no agreement regarding defendant's criminal history category. However, if defendant has previously sustained a conviction for a felony immigration and naturalization offense, the parties will recommend a +2 adjustment, pursuant to USSG 2L1.1(b)(3)(A). If defendant has previously sustained two or more such felony immigration convictions, the parties will recommend a +4 adjustment, pursuant to USSG 2L1.1(b)(3)(B).

13           B.     ACCEPTANCE OF RESPONSIBILITY

14           Notwithstanding paragraph A.3 above, the Government will not  
 15 recommend any adjustment for Acceptance of Responsibility if  
 16 defendant:

- 17           1.     Fails to admit a complete factual basis for the plea  
              at the time it is entered, or
- 18           2.     Denies involvement in the offense, gives conflicting  
              statements about that involvement, or is untruthful  
              with the Court or probation officer, or
- 19           3.     Fails to appear in court, or
- 20           4.     Engages in additional criminal conduct, or
- 21           5.     Attempts to withdraw the plea, or
- 22           6.     Refuses to abide by any lawful court order.
- 23           7.     Contests or assists any third party in contesting the  
              forfeiture of property(ies) seized or forfeited in  
              connection with this case.

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25           //

26           //

1       C. ADJUSTMENTS; DEPARTURES; AND SENTENCE REDUCTIONS UNDER  
2       18 U.S.C. § 3553

3       The parties agree that defendant may not request or recommend  
4 additional downward adjustments, departures, including criminal  
5 history departures under USSG § 4A1.3., and sentence reductions under  
6 18 U.S.C. § 3553, and that the Government may oppose any such downward  
7 adjustments, departures and sentence reductions not set forth in  
8 Section X, paragraph A above.

9       D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

10      The parties have **no** agreement as to defendant's Criminal History  
11 Category.

12      E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

13      The parties agree that the facts in the "factual basis" paragraph  
14 of this agreement are true, and may be considered as "relevant  
15 conduct" under USSG § 1B1.3 and as the nature and circumstances of the  
16 offense under 18 U.S.C. § 3553(a)(1).

17      F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

18      The parties jointly will recommend that defendant be sentenced  
19 to 60 days or the low end of the advisory guideline range as  
20 calculated by the Government whichever is greater followed by 3 years  
21 supervised release.

22      G. SPECIAL ASSESSMENT

23      The parties will jointly recommend that defendant pay a special  
24 assessment in the amount of \$100.00 to be paid forthwith at time of  
25 sentencing. The special assessment shall be paid through the office  
26 of the Clerk of the District Court by bank or cashier's check or money  
27 order made payable to the "Clerk, United States District Court."

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H. STIPULATED REMOVAL

If defendant is not a United States citizen or national, either before or immediately following sentencing, defendant agrees to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official. Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

XI

**DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence above the greater of the high end of the guideline range recommended by the Government pursuant to this agreement at the time of sentencing or statutory mandatory minimum term, if applicable. If the custodial sentence is greater than the high end of that range, the defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

If defendant breaches this plea agreement, at any time, in any way, including but not limited to appealing or collaterally attacking the conviction or sentence, the Government may prosecute defendant for any counts, including those with mandatory minimum sentences,

1 dismissed or not charged pursuant to this plea agreement.  
2 Additionally, the Government may use any factual admissions made by  
3 defendant pursuant to this plea agreement in any such prosecution.

XII

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

This plea agreement is based on the understanding that, prior to defendant's sentencing in this case, defendant has not committed or been arrested for any offense not known to the Government prior to defendant's sentencing. This plea agreement is further based on the understanding that defendant has committed no criminal conduct since defendant's arrest on the present charges, and that defendant will commit no additional criminal conduct before sentencing. If defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this plea agreement, and may recommend any lawful sentence. In addition, at its option, the Government may move to set aside the plea.

XIII

**ENTIRE AGREEMENT**

22 This plea agreement embodies the entire agreement between the  
23 parties and supersedes any other agreement, written or oral.

XIV

**MODIFICATION OF AGREEMENT MUST BE IN WRITING**

26 No modification of this plea agreement shall be effective unless  
27 in writing signed by all parties.

28 //

11

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JO CR 552

1 XV  
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3 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**  
4

5 By signing this agreement, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native  
7 language). Defendant has discussed the terms of this agreement with  
8 defense counsel and fully understands its meaning and effect.

9 XVI  
10

11 **DEFENDANT SATISFIED WITH COUNSEL**  
12

13 Defendant has consulted with counsel and is satisfied with  
14 counsel's representation.  
15

16 KAREN P. HEWITT  
17 United States Attorney  
18

19 5/10/10  
20 DATED  
21

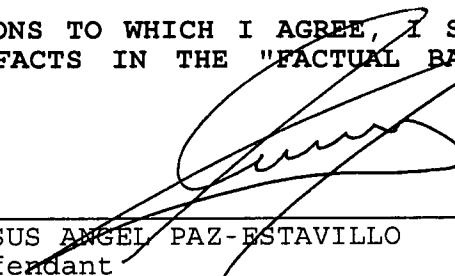
22   
23 HELEN H. HONG  
24 Assistant U.S. Attorney  
25

26 4/27/10  
27 DATED  
28

29 ELIZABETH M. BARROS  
30 Defense Counsel  
31

32 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR  
33 UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"  
34 PARAGRAPH ABOVE ARE TRUE.  
35

36 04/27/2010  
37 DATED  
38

39   
40 JESUS ANGEL PAZ-ESTAVILLO  
41 Defendant  
42